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No. 91-2055

In The
SUPREME COURT OF THE UNITED STATES

October Term, 1992

DOUGLAS DWIGHT BENNETT,
Petitioner,

vs

THE STATE OF MICHIGAN,
Respondent.

REPLY TO BRIEF IN OPPOSITION

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I Responding to the jurisdiction

The petitioner, through the trial and the two state appeals, raised the issue of Federal Question Jurisdiction.

All that is needed for Federal Question Jurisdiction is if a right or immunity can be asserted as basis for Federal Jurisdiction, and only if right is an essential ele-

ment to Plaintiff's claim by the constitution or laws of the United States. ID 5th Amendment to the United States Constitution. This issue was raised at trial and during both state appeals.

That after reviewing the respondent's brief on page 2, the respondent states:

> "Petitioner gave Faulkner a list of the cost of items he had used and material supplied. This, according to the Petitioner, totalled $4,003.00. The Petitioner also told Faulkner that he would refund $4,400.00. (T,91) Although, Petitioner never returned any of the money. (T,92."

This issue of the petitioner never returning any of the money is the sole issue for bringing charges against the petitioner. The trial transcripts clearly establish the fact that the petitioner did not violate the Building Trust Fund.

When James Faulkner was re-directed by Mr. Saunders, Vol. V, p. 113.

Q. (to Mr. Faulkner) Would you have accepted back the remaining money had he tried to give it to you?

A. I don't know.

Q. Why don't you know?

A. Because I believe the $4,100.00 that he says that he did was very overly priced through research that I've done with other building contractors for their opinion of what the work he's done that he jacked up the prices.

The issue of law is not in Faulkner's beliefs; the law only sets forth the restrictions, not Mr. Faulkner's beliefs, Peoples v Miller, 78 Mich. App. 336, No 5 & 6. A bill of cost was submitted (People's exhibit P.X. - 7. The District Court agreed on the cost and only the balance of the trust

was due. If Faulkner is to argue cost, this would be civil, not criminal, for it violates the petitioner's due process rights (Federal Question Jurisdiction, U.S. v Hayes, 4544 U.S. 847.

That if criminal charges are to be considered, then this court should review the U.S. v Guest, 383 U.S. 745 decision. Faulkner, the prosecuting attorney and the trial judge are within the provisions for filing under Title 18, U.S.C. 241.

Q. (Prosecutor to James Faulkner): All right, so let me see, maybe I'm not being clear. When I asked you if you would accept the money he set out there that he owed you, about $4,000.00; When you say you don't know, what do you mean, do you mean that you want more, or you wouldn't take any?

A. I feel that I'm entitled to the full $8,000.00 that I gave him.

The District Court during its

preliminary examination Vol V, p. 32 established the fact that at least $4,000.00 should have been returned to the Faulkners.

The District Court did establish the fact that money from the Trust was used to pay for material and subcontractors, and that the Petitioner (Bennett) did pay all subcontractors and material.

That during the trial, the people established the fact through exhibits No. 2 and No. 3 that two checks were issued to Douglas Bennett personally and were cashed by Douglas Bennett.

That after review People v Miller 78 Mich App 336 (P. 345), the court cited Chambers v Chambers 207 Mich 129, 136, 173 N.W. 367 (1919).

"While the prudent contractor will probably maintain individual accounts for particular projects and maintains careful records of transactions, we do not believe the statute mandates any particular form or procedure in handling the Trust Fund.

The Petitioner argued that he was willing to refund the balance of the Trust, Peoples Exhibit P.X. 7. Reviewing M.C.L. 570.152, only the $4,4000 remained in the Trust and the petitioner was only required to retain the balance of the Trust. The only demand made by the Faulkners was for the full $8,000. The petitioner's argument is that he (Bennett) raises the issue of due process, 14th Amendment to the United States Constitution.

Responding to Respondent's argument that the petitioner violated M.C.L. 339.2401 (B); M.S.A.

18 425 (2401) (B), "Residential maintenance and alteration contractor" means a person, who for a fixed sum . . . undertakes with another for the . . . laying of concrete on residential property . . .

The Petitioner's argument at-law is that the laying of concrete does not fall within the police powers as found in Black's Law Dictionary, 4th Edition.

The power vested in a state to establish laws and ordinances for the regulation and enforcement of its police as above defined. The power power vested in the legislature to make, ordain, and establish all manner of wholesome and reasonable laws, statutes, and ordinances, either with penalties or without, not repugnant to the constitution, as they shall judge to be for the good and welfare of the commonwealth, and of the subjects of the same. An authority conferred by the American constitutional system upon the individual states, through which they are enabled to establish a special department of police; adopt such regulations as tend to

prevent the commission of fraud, violence, or other offenses against the state; aid in the arrest of criminals; and secure generally the comfort, health, and prosperity of the state, by preserving the public order, preventing a conflict of rights in the common intercourse of the citizens, and insuring to each an uninterrupted enjoyment of all the privileges conferred upon him by the laws of his country.

The police powers is the exercise of the sovereign right of a government to promote order, safety, health, morals and general welfare within constitutional limits; the laying of cement does not fall within the police powers.

The petitioner's theory at-law is based on the Wyoming court Sampson v Sheridan 25 Wyo 347. The court stated ". . . Moreover, it is held that the requirement that a cement contractor shall procure a license is an unjustifiable and

unreasonable police regulation (118 A.L.R.).

The petitioner, during the state criminal proceeding, called Ernest Shinavard as a witness in support of Mr. Bennett. Mr. Shinavard testified that Mr. Bennett had been laying cement in residential subdivisions and that all is required is that the job be properly inspected by a state employee's under state authority and that the concrete used meet state requirements and that Mr. Bennett was not required to be licensed to lay cement, and that under cross-examination, by prosecution, the people could not establish a counter-claim to prove otherwise (Vol. VI, pp. 29-39.

Therefore, your petitioner

brings this issue before the court to rule on the constitutionality of M.C.L. 339.2401 (B); M.S.A. 18.425 (2401) (B); and whether the statute violates Article I, §10 of the United States Constitution impairing the obligation of the contract.

II In summary respond to respondant's issues raised on page 6, the petitioner states the following to the court.

Now let's review this case, the exhibits, and the testimony (Vol 4, p. 8)

First for consideration, Faulkner delivered to Bennett an in-house delivery service of household items and products marketed by Jewel Tea.

That through this relationship

Mr. Faulkner obtained the fact that Mr. Bennett did make improvements to his residence; three additions to improve his home, and Mr. Faulkner was advised by Bennett that this would be done under a home-owner permit. The inspection would be done by City Inspectors and would have to conform to the building standards. If Mr. Bennett built the additions, they would be inspected, and Mr. Bennett would be issued an occupancy permit. All of this was explained to Mr. Faulkner while in the Bennett home.

Several months passed and Mr. Faulkner approached Bennett while he was making a delivery to the Bennetts. Faulkner said: "I am thinking about building an addition to my house, and I (Faulkner) would

like you (Bennett) to bid on the addition."

Mr. Bennett drafted a set of plans for the proposed addition and submitted a total cost for the addition.

Reviewing this issue of the total cost, Mr. Faulkner testified that Bennett was going to hire sub-contractors (Vol 4, p. 16), for Mr. Bennett could not do wiring or heating, that they required a licensed contractor to do this type of work.

The contract was signed and worked began. Now let's review the counter-statement of the respondent's p.2, paragraphs 1 and 2 -- where the respondent referred to the building permit. The respondent stated that a building permit was

never issued. The proof that was submitted to the court was a cleverly doctored exhibit.

The people submitted as an exhibit a document, which Faulkner stated he (Faulkner) was ordered by Bennett to obtain the permit. After looking very closely at the permit, the authorities signature was covered by laying a sheet of paper over it and photocopying it. This exhibit was submitted to the court for review to influence the trial judge and the respondents were allowed to proceed. That as Mr. Faulkner testified, Mr. Bennett was there when the permit was issued to Faulkner.

That the respondent should be

When referring to respondent, he is referring to the brief filed in the U.S. Supreme Court.

ordered to produce this exhibit in question, to lay to rest that a permit was issued, or was this just a request for a permit.

The respondent also stated (P. 2, par. 2): "The work became slower and slower, with the petitioner showing up for an hour and then disappearing."

Mr. Faulkner testified at trial (Vol V, p. 105 and 113) that the city ordered Faulkner to not let Bennett proceed with the laying of cement. The fact is that Bennett was willing to proceed but the city would not allow Bennett to proceed.

A review of the testimony reveals that Samual Gun advised Faulkners that even if Bennett did an "A-1" job, that they could sue top recover the entire cost of the

addition (Vol V, p. 116 - 151.

Now that the Faulkners know what is needed to recover the cost of the addition and what the prosecuting attorney needed to convict Mr. Bennett of Trust Fund violation and being an unlicensed residential builder, the Faulkners had Bennett sign a statement for completion of the addition and a cost breakdown of the addition. That Mr. Faulkner testified that he (Faulkner) was advised by the City of Farmington Hills that Bennett could not proceed with the addition, and after being advised Mr. Faulkner wanted Bennett to complete the addition. The only conclusion that can be reached is that there was no violation of the Building Trust Fund and that M.C.L. 339.240 (B); M.S.A. 18.

425 (2401) (B) violates the authority of the State of Michigan to act under the Police Power Authority.

Responding to the respondent's argument (P. 7, par. 2) that the petitioner had not met the requirements of Rule 14 (K)(2).

The petitioner personally submitted his petition for writ of certiorari to the clerk of the court. After review by the clerk, the clerk pointed out the defects. The clerk docked the brief and the petitioner was given twenty days to correct and resubmit to the clerk of the court. The clerk did not advise the petitioner of the printing error.

That after reading Rule 33 (C), "The document should be printed on both sides of the page,

if practicable."

III Responding to this issue, when the petitioner printed his brief it was not practicable to have the brief printed on both sides. This could is aware that there are lawsuits pending in the Federal District Court.

The petitioner was ordered by the U.S. District Court trial judge to advise the court of the standing of the criminal appeal. The petitioner must comply with the filing requirements of the U.S. District Court. The petitioner filed with the court two copies of the writ of certiorari and mailed a copy to all attorneys of record. The copies were duplicated on 8½" x 11" paper size. To conform to the standards

of this court, the brief was cut to size. This method cut the cost of producing the brief.

Your petitioner is a cement contractor. The petitioner could not afford the $24.00 per page charge that was quoted by a printing company. After reviewing the rules of this court and having the brief reviewed by the clerk of the court, the petitioner is of the opinion that the petitioner met the requirement of the court. At the request or order of the court, the petitioner will submit a new brief to meet the requirements of the court.

Your petitioner prays that this court not hold this petitioner to the same standards as a licensed attorney in view of Haines v Kerner,

404 U.S. 519.

CONCLUSION AND PRAYER FOR RELIEF

WHEREFORE, your petitioner prays that this honorable court grant the writ of certiorari to review the decision of the Michigan Court of Appeals.

DATE
Aug. 17, 1992

Respectfully submitted,

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BEST AVAILABLE COPY